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Department of the Treasury

Washington, DC 20224

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Date:

February 27, 2007

In Re:

LEGEND:

City =

State =

Program =

Department =

Dear :

This letter responds to your ruling request submitted on behalf of the City by a letter dated November 26, 2003, as supplemented on February 19, 2004, October 10, 2006, and February 12, 2007. Your request relates to whether the City is required to file information returns for payments made under the Program described below.

BACKGROUND

The City is a municipal government incorporated under the laws of State. The City has an easement or other property interest over driveway approaches, which include the sidewalks, curbs, and gutters within driveways. Accordingly, the City shares with property owners the responsibility of maintaining driveway approaches. As a rehabilitation incentive, the City implemented the Program to reimburse the costs of replacing existing driveway approaches, including sidewalks, curbs, and gutters within driveways, that are deteriorated, broken, and/or hazardous, as determined by the Department. The reimbursements are funded with local home-rule sales tax proceeds.

Under the Program, the City generally reimburses property owners a maximum of 50 percent of rehabilitation cost. In order to receive the reimbursement, applicants must (i) own properties that are located within the City and (ii) comply with the Program procedure which is explained below. In certain cases, the City reimburses 100 percent of the rehabilitation cost. Full reimbursement is made if applicants (i) meet the requirements for the 50 percent reimbursement, (ii) are owners of primary residences, and (iii) are qualified senior citizens or disabled persons. To be considered qualified senior citizens or disabled persons, homeowners must provide proof that they are either (i) 62 years of age or older and meet income and asset limitations, or (ii) certifiably disabled.

Under the Program procedure, a property owner first contacts the Department. The Department next determines the areas that are eligible for the Program and delineates the scope of work. The property owner then submits an application and an estimate from a contractor. After the Department has approved the application, the property owner can request the contractor to perform the work. The contractor must contact the Department 24 hours prior to the start of work. After completion of the work, the Department inspects the completed work and notifies the property owner as to whether the work is acceptable. With the approval by the Department, the property owner pays the contractor and submits proof of payment to the Department. The City processes the application and reimburses an applicable amount of the rehabilitation cost.

LAW AND ANALYSIS

Section 6041 of the Internal Revenue Code (hereinafter the "Code") requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Internal Revenue Service (hereinafter the "Service") and to furnish an information statement to the payee.

Section 1.6041-1(c) of the Income Tax Regulations (hereinafter the "Regulations") provides that payments are fixed when they are paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. Section 1.6041-1(a)(2) requires a payor to report section 6041 amounts on Form 1099. Payments that are not fixed or determinable are not subject to information reporting under section 6041.

The payments of compensation (and other amounts) required to be reported under section 6041 are those includible in gross income under section 61. Accordingly, in order to decide whether the City is required to furnish an information return to the

property owners, it is necessary to examine whether the payments are includible in gross income.

Section 61(a) of the Code and the Regulations thereunder define gross income to mean all income from whatever source derived. See also section 1.61-1(a) of the Regulations. Under section 61, Congress intended to tax all gains or undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431 (1955).

Bailey v. Commissioner, 88 T.C. 1293 (1987), acq., 1989-2 C.B. 1, held that the recipient of a façade grant lacked complete dominion and control over the façade because (i) the recipient was required to grant an easement to the city's urban renewal agency, and (ii) the city's urban renewal agency maintained substantial control over the rehabilitation work performed on the façade by selecting the contractor, negotiating the terms of the contract, and paying for the work that was performed on the façade. Accordingly, the cost of the rehabilitation work performed was not included in the recipient's income and was excluded from the property's basis. Id. at 1301.

Furthermore, the Service has consistently concluded that payments to individuals by governmental units under legislated social benefit programs for the promotion of the general welfare of the public are not includible in a recipient's gross income. See, e.g., Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840. To qualify under the general welfare exclusion, payments must (i) be made from a governmental fund, (ii) be for the promotion of general welfare (i.e., generally based on individual or family needs such as housing, education, and basic sustenance expenses), and (iii) not represent compensation for services. Rev. Rul. 75-246, 1975-1 C.B. 24; Rev. Rul. 76-144, 1976-1 C.B. 17; Rev. Rul. 82-106, 1982-1 C.B. 16.

In Rev. Rul. 76-395, 1976-2 C.B. 16, the Service ruled that payments made to low-income individuals primarily in order to subsidize home improvements necessary to correct building code violations and thereby provide safe and decent housing were excluded from the recipients' income under the general welfare exclusion. Payments based on disability also have qualified for exclusion under the general welfare doctrine. Rev. Rul. 57-102, 1957-1 C.B. 26 (state grants to the blind).

On the other hand, in Rev. Rul. 76-131, 1976-1 C.B. 16, the Service ruled that payments made by the State of Alaska to long-term residents were not excluded by the general welfare exclusion because the payments were based on the recipient's age and residency requirements, regardless of financial or employment status, health, or educational background.

In this case, property owners lack complete dominion and control over their driveway approaches, which are subject to a public right-of-way. In addition, the City

substantially controls the rehabilitation work; it must pre-approve the rehabilitation work and post-inspect the work before any payments are made to the contractors. Accordingly, the reimbursements are not income to the property owners.

Furthermore, even assuming the 100 percent reimbursements made by the City to qualified senior citizens or disabled persons can be said to reimburse these property owners for *their* share of maintenance responsibility, the additional reimbursement is excluded from gross income under the general welfare doctrine. The Program makes reimbursements from a governmental fund, the additional reimbursement is based on age and financial need or disability, and the reimbursements do not represent compensation for services.

Based on the information submitted and representations made, we conclude that the reimbursements made by the City under the Program are excludable from the gross incomes of the property owners for federal income tax purposes based on the authorities addressed above. Accordingly, the City is not required to file information returns with the Service or to furnish information statements to the recipients with respect to the reimbursements.

CONCLUSION

For these reasons, we conclude that the City is not subject to the information reporting requirements of section 6041 with respect to the reimbursements distributed to the property owners under the Program.

This document may not be used or cited as precedent. See section 6110(k)(3) of the Code.

Sincerely,

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